

STATE OF MICHIGAN
COURT OF APPEALS

In re R.J. ROBINSON, Minor.

UNPUBLISHED

May 23, 2019

No. 345981

Wayne Circuit Court

Family Division

LC No. 01-396247-NA

Before: REDFORD, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Respondent father, Albert Oliver, Jr., appeals as of right the order terminating his parental rights to his daughter, RJR, under MCL 712A.19b(3)(b)(i) (sexual abuse of child’s sibling and reasonable likelihood child will be harmed if returned to parent), (j) (reasonable likelihood child will be harmed if returned to parent), (k)(ii) (sexual abuse involving penetration of child’s sibling and reasonable likelihood child will be harmed if returned to parent), and (k)(ix) (sexual abuse involving contact or penetration of child’s sibling and reasonable likelihood child will be harmed if returned to parent). We affirm.

I. STATUTORY GROUNDS

Respondent father argues that petitioner failed to establish the statutory grounds for termination found in MCL 712A.19b(3)(b)(i), (j), (k)(ii), and (k)(ix) by clear and convincing evidence because there was no evidence that RJR faced a reasonable likelihood of harm if returned to respondent father’s care. We disagree.

We review for clear error the trial court’s determination of statutory grounds under MCL 712A.19b(3) for termination of parental rights. MCR 3.977(K); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). To terminate parental rights, the trial court must find at least one of the statutory grounds for termination in MCL 712A.19b(3) by clear and convincing evidence. *Id.* A factual finding is clearly erroneous if this Court has a definite and firm conviction that a mistake was made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). This Court defers to the trial court’s “special opportunity to judge the credibility of witnesses.” *Id.* When a statutory ground for termination is proven, the trial court shall order termination of parental rights if termination of parental rights is in the children’s best interests in light of the evidence as set forth in the whole record. *In re LE*, 278 Mich App 1, 25; 747 NW2d

883 (2008). If this Court concludes that the trial court did not clearly err by finding one statutory ground for termination, we need not address the additional grounds. *In re HRC*, 286 Mich App at 461.

This case arises from the termination of respondent father's parental rights because he sexually abused RJR's half-sister, DVR, in RJR's presence. The court determined that petitioner established the statutory grounds for termination found in MCL 712A.19b(3)(b)(i), (j), (k)(ii), and (k)(ix) by clear and convincing evidence.

MCL 712A.19b(3)(b)(i), (j), (k)(ii), and (k)(ix) provide that a court shall terminate parental rights if:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

* * *

(k) The parent abused the child or a sibling of the child, the abuse included 1 or more of the following, and there is a reasonable likelihood that the child will be harmed if returned to the care of the parent:

* * *

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

* * *

(ix) Sexual abuse as that term is defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622.

“ ‘Sexual abuse’ means engaging in sexual contact or sexual penetration as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a child.” MCL 722.622(z). MCL 750.520a(q) provides:

“Sexual contact” includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can

reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

(i) Revenge.

(ii) To inflict humiliation.

(iii) Out of anger.

And MCL 750.520a(r) provides: “ ‘Sexual penetration’ ” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.”

Respondent father pleaded guilty in a criminal case to performing oral sex on DVR and digitally penetrating her. DVR was 17 years old when the abuse occurred. Respondent father pleaded guilty to third-degree criminal sexual conduct and the court took judicial notice of his criminal case. DVR is RJR’s half-sister. Accordingly, petitioner established by clear and convincing evidence that respondent sexually abused one of RJR’s siblings as required by MCL 712A.19b(3)(b)(i) and (k)(ix), and the sexual abuse included penetration as required by (k)(ii).

There is also a reasonable likelihood that RJR would be harmed if returned to respondent father’s care. This Court has determined that “how a parent treats one child is certainly probative of how that parent may treat other children.” *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001) (citation omitted). As such, respondent father’s sexual abuse of DVR is probative of how respondent father may treat RJR. Harm includes physical as well as emotional harm or abuse. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

In this case, evidence established that RJR witnessed respondent father sexually abuse DVR. RJR suffered trauma from that experience for which she received ongoing trauma therapy. Evidence established that respondent father’s actions negatively affected RJR’s mental and emotional health. Accordingly, clear and convincing evidence established that a reasonable likelihood existed that RJR will be harmed if returned to respondent father’s care. Therefore, the trial court did not err when it determined that petitioner established by clear and convincing evidence the statutory grounds for termination under MCL 712A.19b(3).

II. BEST INTEREST

Respondent father also argues that termination of his parental rights did not serve RJR’s best interest because RJR is bonded to respondent father. We disagree.

The trial court must determine by a preponderance of the evidence whether termination of parental rights serves the child’s best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). “The trial court should weigh all the evidence available to determine the [child’s] best interests.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The focus must be on the child, rather than the parent. *In re Moss*, 301 Mich App at 87. In making the best interest determination, “the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster

home over the parent's home.” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

Respondent father claims that the trial court should have considered his bond with RJR before terminating his parental rights. While RJR may have had a bond with respondent father before he sexually abused DVR, the record reflects that RJR's witnessing respondent father sexually abuse DVR irrevocably damaged that bond. The record reflects that RJR suffered significant trauma as a result of the incident. RJR's lawyer-guardian ad litem advised the trial court that RJR did not want a relationship with respondent father. Termination of respondent father's parental rights supports RJR's "need for permanency, stability, and finality." *Id.* The record indicates that RJR has a permanent, stable home with her mother that is free from sexual abuse. Respondent father is presently incarcerated and cannot provide RJR a home, and we are not convinced based upon the record that respondent father could do so because of the manner in which he disregarded RJR's wellbeing and perpetrated the sexual abuse on her sister in her presence. Termination of respondent father's parental rights serves RJR's best interests by providing her finality because she no longer has to fear that respondent father will sexually abuse her or DVR. A preponderance of the evidence in the record supports the trial court's decision that termination of respondent father's parental rights served RJR's best interest.

Affirmed.

/s/ James Robert Redford

/s/ Jane E. Markey

/s/ Kirsten Frank Kelly